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In the Supreme Court of the United States

OCTOBER TERM, 1973

LENA GLIMCO,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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To: The Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States.

Petitioner, Lena Glimco, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit affirming a judgment against her entered by the United States District Court for the Northern District of Illinois, Eastern Division.

OPINION OF THE COURT BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit in United States of America v. Joseph P. Glimco and Lena Glimco, No. 73-1767, was entered on February 22, 1974 as an unpublished order not to be cited per Circuit Rule 28. It is printed in the Appendix to this Petition. (App. 1-5)

JURISDICTION

The judgment of the Court of Appeals affirming the District Court decision was entered on February 22, 1974. (App. 1-5) A timely Petition for Rehearing was denied on April 9, 1974. (App. 6)

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED

1. Whether the defendant, Lena Glimco, can assert the defense of "innocent spouse" as provided by Section 6013(e) of the Internal Revenue Code of 1954, in a suit for collection.

2. Once the tax liability of married persons filing joint income tax returns has been established through the Tax Court and courts of review, and a suit for collection has been instituted by the United States, can an "innocent spouse" under the Revenue Code secure relief under the plain wording of the Statute.

3. If a statute is clear and unambiguous on its face, can it judicially be interpreted, or should it be held to mean what is plainly states.

STATUTE INVOLVED

Internal Revenue Code of 1954:

SEC. 6013. JOINT RETURNS OF INCOME TAX BY HUSBAND AND WIFE.

* * *

(e) *Spouse Relieved of Liability in Certain Cases.*—

(1) *In General.*—Under regulations prescribed by the Secretary or his delegate, if—

(A) a joint return has been made under this section for a taxable year and on such return there was omitted from gross income an amount properly includable therein which is attributable to one spouse and which is in excess of 25 per cent of the amount of gross income stated in the return,

(B) the other spouse establishes that in signing the return he or she did not know of, and had no reason to know of, such omission, and

(C) taking into account whether or not the other spouse significantly benefited directly or indirectly from the items omitted from gross income and taking into account all other facts and circumstances, *it is inequitable to hold the other spouse liable for the deficiency* in tax for such taxable year attributable to such omission,

then *the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year* to the extent that such liability is attributable to such omission from gross income.

(2) *Special rules.*—For purposes of paragraph (1)—

(A) the determination of the spouse to whom items of gross income (other than gross income from property) are attributable shall be made without regard to community property laws, and

(B) the amount omitted from gross income shall be determined in the manner provided by section 6501(e)(1)(A). (Emphasis supplied)

LEGISLATIVE HISTORY

Senate Report No. 91-1537 (U.S. Code Congressional and Administrative News, 91st Cong., Sec. Session 1970, Vol. III p. 6089 at 6093) reads in pertinent part as follows:

• • •

> The amendments made by this bill are to apply to all taxable years to which the Internal Revenue Code of 1954 applies and corresponding provisions are to be deemed included in the Internal Revenue Code of 1939 and are to apply to all taxable years to which that code applies. The bill, of course, does not open a year which has been closed by the statute of limitations, res judicata, or otherwise.

STATEMENT OF FACTS

On June 30, 1961, the Internal Revenue Service sent statutory notices of deficiencies to the defendants Joseph P. and Lena Glimco, claiming deficiencies in income tax reported on their joint income tax returns for the years 1954, 1955, 1956 and 1957. The Internal Revenue Service claimed that certain amounts paid by Joseph P. Glimco's local union to defense attorneys to defend criminal charges against him were includable in gross income. The defendants' failure to include these amounts in gross income reported on their returns for the years in question created the alleged deficiencies.

On September 27, 1961, Joseph P. and Lena Glimco filed their petition in the United States Tax Court to contest these deficiencies, contending (1) that the legal fees paid by the union were not includable in the petitioners' gross income, and (2) that if the fees were includable, then they were deductible as ordinary business expenses. The Tax Court, in a decision entered July 20, 1967 (T.C. Memo. 1967-119) decided both of these issues against the peti-

tioners and ruled that there were deficiencies for the years in question. Pursuant to this decision, the deficiencies were assessed against the defendants on September 8, 1967.

The decision of the Tax Court was then appealed by the taxpayers to the United States Court of Appeals for the Seventh Circuit where the decision was upheld (397 F.2d 537). The taxpayers then sought a writ of certiorari in the United States Supreme Court and were denied (393 U.S. 981).

The United States filed the complaint in this action against Joseph P. and Lena Glimco to collect the taxes which were assessed against them jointly, pursuant to the Tax Court decision. Defendant Lena Glimco filed a motion to dismiss the complaint as to her, claiming that Secton 6013 which was amended by Public Law 91-679, 84 Stat. 2063,[1] relieves her of joint liability for the years in question. The United States opposed this motion on the grounds that Lena Glimco is not eligible to claim the protection of Section 6013(e) since her liability has been determined by the Tax Court of the United States. The District Court found Lena Glimco not eligible to claim the protection of Section 6013(e) and the Court of Appeals affirmed that decision.

Throughout the proceedings in the District Court and in the Court of Appeals there was no contention made as to the correctness of the deficiency charged in the Complaint in the United States District Court. The suit below was not in any way utilized as a vehicle for petitioner to relitigate the correctness of the amount of tax assessed.

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[1] This law was passed after the denial of the Writ of Certiorari but before the suit for collection.

REASONS FOR GRANTING THE WRIT

I. This case presents an important question which has not been, but should be, decided by this Court. When the Congress passed the "Innocent Spouse Act", it was in recognition of the injustice against such persons under the tax laws. It was meant "to apply to all taxable years to which the Internal Revenue Code of 1954 applies * * *" (Legislative History). The Government and the Courts below have espoused a narrow construction of the statute which completely emasculates the fine sense of honor which had brought this statute into being. The statute has been given a niggardly interpretation when it was intended to be read in a kindred spirit.

II. This Court should resolve the obvious conflict between (1) the plain meaning of the statute, (2) the Legislative History and (3) the interpretation placed upon it by the Courts below. Its impact on literally thousands of persons who may be an "innocent spouse" should be resolved by this Court.

I.

Section 6013 of the Internal Revenue Act (26 U.S.C. §6653) so far as it is pertinent, provides that:

> "(e) Spouse Relieved of Liability in Certain Cases—
>
> "(1) In General. — Under regulations prescribed by the Secretary or his delegates . . ."

Under those proposed regulations — legislative authorized — the word "liability" has not been circumscribed — as the Court below would have it — to final adjudica-

tions by the Tax Court. Rather, it refers to a "liability for any tax, penalties, additions to tax, interest, *or other amounts* to the extent that such liability is attributable to an omission from gross income in taxable year, . . ." (26 CFR Parts 1, 301, §1.6013-5(a)). The "Order" (decision) gives a niggardly interpretation, which is diametrically in conflict with the expansive, generous and remedial direction expected to be employed by the Regulation, which being legislatively authorized, has the force and effect of the law that authorized its making. We submit, on the basis of giving this restrictive interpretation, the Court erred.

We also suggest the legislative history affirmatively rejects this limited interpretation. The Committee Report on P.L. 91-679, House Ways and Means Committee, 1971 C.C.H. Stand. Fed. Tax Rep., ¶5018.04 provides in part:

> "The amendments made by this bill are to apply to all taxable years to which the Internal Revenue Code of 1954 applies and corresponding provisions are to be deemed included in the Internal Revenue Code of 1939 and are to apply to all taxable years to which that code applies."

A certain indication of an intention of this limited retroactivity is eminently apparent. We feel certain the Congress does not ascribe to the Internal Revenue Service a necessity that it (the Congress) give the Service thirty-two years to ferret out income understatements.

We also submit the restrictive interpretation violates the intent of the legislature. When the law-makers act to remedy injustices, the policy of the law is to accord such remedy a generous reception unless it clearly directs its operation be clearly prospective. That policy would certainly be accentuated when its objective is to protect the rights of property of innocent persons. Therefore, the

Statute articulates the criteria of the necessary elements to qualify as the "innocent spouse."

Underlying the protection of the statute is the recognition that many a good woman (or man) has become enamoured of a knave, a cheat and even a thief. Coupled with this is the Government incentive and encouragement that the married couple save tax money by filing jointly —without the warning that his (or her) duplicity may wipe out her (or his) private estate, and that honestly and drudgingly earned by parents or grandparents. There is, thus, raised the Constitutional problem of whether an ill-placed confidence in a spouse which led to signing a document—later found to contain the guilty spouse's substantial variations—is the due process of law in the deprivation of property contemplated by the Fifth Amendment.

Petitioner became defendant in a brand new lawsuit—authorized by law and within the limitations period—the suit for collection. The matters litigated to wit: the determination of the deficiency was not raised. A newly authorized defense, obviously never litigated, was. *Res judicata* does not apply.

The narrow construction of this statute by the courts below should not stand.

II.

Section 6013(e) is clear on its face. It provides that "If * * * it is inequitable to hold the other spouse liable for the deficiency in tax * * *, then the other spouse shall be *relieved of liability* for tax * * *" (Emphasis ours)

Certainly there should be no question that Congress had the power to relieve an innocent taxpayer of an established tax burden. It is equally well established that if the statute is clear and unambiguous on its face it should not

be interpreted but must be held to mean what it plainly states. On many occasions this Court has spoken in the area of construction of statutes. The following are but a few observations which have been made by the Court. "Whatever the consequences, we must accept the plain meaning of plain words." Holmes: *United States* v. *Brown*, 206 U.S. 240, 244. "When we depart from the words ambiguity comes." McKenna: *Rhode Island* v. *Palmer*, 253 U.S. 350, 398. "We have not traveled, in our search for the meaning of the lawmakers, beyond the borders of the statute." Cardozo: *United States* v. *Great Northern Railway*, 287 U.S. 144, 154. "Whatever the reason, words mean what they say." Douglas: *Singer* v. *United States*, 323 U.S. 338, 346. "Whatever the scope of power, we are reminded of our duty to strain constructions to the uttermost if by so doing we can give relief from injustice or oppression." Cardozo: *Thomann* v. *City of Rochester*, 256 N.Y. 165, 173-174.

Probably the most cogent statement was made by Mr. Justice Holmes in a treatise entitled "The Theory of Legal Interpretations" 12 Harv. L.Rev. 419. There he stated: "We do not inquire what the legislature meant; we ask only what the statute means."

The case before the district court was a suit by the government against the taxpayers to enforce the liability. We again remind the Court that Lena Glimco is not attempting to open up or contest the finality of the amount found to be due and owing. Congress did not want the question of relief under 6013(e) to be a vehicle for one of the parties to reargue the amount of the original tax liability. The only question here is whether the clear wording of the statute that the spouse shall be relieved of liability is appropriate as a defense to the action which

in essence is the enforcement of her liability to respond to the determined tax liability.

If the statute is clear, then no recourse of legislative history is warranted or needed to understand its meaning. §6013(e) relieves an innocent spouse of tax liabilities for the years covered by the 1954 Code if the spouse meets the three statutory tests. There is no question in this case that Lena Glimco meets the three statutory tests and the years involved are in fact covered by the 1954 Code.

The Government's defense to the taxpayer's motion for relief was that these periods were closed by res adjudicata and, therefore, §6013(e) of the Internal Revenue Code does not apply. The reason for this view is the Government's position that the legislative history of §6013(e) indicates that relief does not extend the tax liabilities established prior to its enactment. The Senate Finance Committee Report on §6013(e) in the last sentence stated that "the bill, of course, does not open a year which has been closed by the Statute of Limitations, res adjudicata or otherwise." It is suggested that the Government, in advancing this narrow construction of the statute has grossly misinterpreted that sentence. That sentence simply states the obvious, that the bill will not permit the taxpayer or the Government to *relitigate* the *correctness* of the amount of tax assessed for the year in question if that issue has once been litigated; if the usual period of limitations is expired or if the issue is otherwise closed.

We respectfully submit that this Court should adopt the view that the last sentence only bars a litigation of the correctness of the amount of the taxes assessed. Both the report and the statute can then be harmonized with an entirely sensible result. Thus, the relief provided by §6013(e) applies to all liabilities for taxable years under

the 1954 Code, (provided the requirements of §6013(e) are satisfied) but neither the taxpayer nor the Government may by reason of the bill reargue whether the amount of the tax assessed was correct.

CONCLUSION

Wherefore, this Petitioner respectfully prays the Court to issue its Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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